

A.G. Contract No.: KR00-2104TRN
ADOT ECS FILE No. JPA 00-179
Project: 202L, Red Mountain Freeway
Section: Gilbert Rd. - Higley Rd.
TRACS No. H529901C

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF MESA

THIS AGREEMENT is entered into 19 July, 2001 pursuant to Arizona Revised Statutes Section 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF MESA acting by and through its MAYOR and CITY COUNCIL (the "City"). Any capitalized terms not defined elsewhere shall have the meanings described in Section I.

I. DEFINITIONS

"Accelerated Construction Schedule" means the roadway construction of the Project to ~~begin in or~~ around July, 2001, and be completed in or around May, 2003.

"Accelerated Design Schedule" means the roadway design of the Project which began in April, 1999 and is expected to be completed in or around April, 2001.

"Accelerated Project Schedules" means the Accelerated Design Schedule, the Accelerated Right of Way Acquisition Schedule and the Accelerated Construction Schedule.

"Accelerated Right of Way Acquisition Schedule" means the right of way acquisition of the Project which began in September, 1999 and is expected to be completed in or around April, 2001.

"Board" means the Transportation Board of the Arizona Department of Transportation.

"City Interest Account" means the account established by the City with the Pool and containing monies to be used to pay the City's portion of the interest accruing on the GAN.

"Department" means the Arizona Department of Transportation.

"GAN" means the Grant Anticipation Notes issued by the Board pursuant to the provisions of Title 28, Chapter 21, Article 3 of the Arizona Revised Statutes for the purpose of paying for the construction of the Project.

"GAN Issuance Costs" means those reasonable legal and financial costs and expenses incurred to issue and administer the GAN.

NO. 24766
Filed with the Secretary of State
Date Filed: 07/19/01

Barbara Bayless
Secretary of State

By Dick J. Greenwald

"GAN Proceeds" means the GAN proceeds relating to the construction cost of the Project only and resulting from the issuance of the GAN.

"GAN Proceeds Account" means the account established in the financing documents for the GAN containing proceeds derived from the issuance of the GAN and other amounts, to be used to pay construction costs of the Project.

"Grant Agreement" means the written agreement between the Department and the United States of America or any of its departments or agencies by which the Department will receive grants to construct the Project or reimburse the Department for monies spent with respect to the Project.

"Life Cycle Program" means the Maricopa Association of Government's Area Life Cycle Construction Program effective at the time or for the period indicated.

"Parties" means the State and the City collectively.

"Party" means the State or the City as the case may be.

"Pool" means the State Treasurer's Local Government Investment Pool.

"Project" means the right of way acquisition, roadway design and construction of the ultimate facility for the 202L, Red Mountain Freeway between Gilbert Road and Higley Road, including interchanges at Val Vista Drive, Greenfield Road, and Higley Road, and the relocation of Thomas Road, east of Higley Road.

"Project Programmed Funds" means the funds approved by the Maricopa Association of Governments in the Life Cycle Program designated for the Project.

"State Standards" means, unless otherwise agreed to by the parties to this Agreement, Department guidelines, specifications, rules and regulations as of the date of this Agreement for the design and construction of ramps, highways, landscaping, fencing and enclosure structures, drainage and flow structures and other related highway structures.

"State Treasurer" means the Treasurer of the State of Arizona.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. RECITALS

1. The State is empowered by Arizona Revised Statutes Sections 28-401 and 28-7677 to enter into this Agreement and has by resolution (attached hereto as Exhibit A and made a part hereof) resolved to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by City Charter, Article 1, Section 103 to enter into this Agreement and has by resolution, a copy of which is attached hereto as Exhibit B and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State has programmed in the FY 2001-2007 Life Cycle Program the right of way acquisition of the Project beginning in April, 2000 and ending in March, 2002; the roadway design of the Project beginning in April, 2000 and ending in March, 2002; and the construction of the Project beginning in June, 2002 and open to traffic in May, 2004.

SB
2003

4. The City desires that the roadway design, right of way acquisition and construction of the Project be completed in accordance with the Accelerated Project Schedules.

5. The Board has authority pursuant to Title 28, Chapter 21, Article 3 of the Arizona Revised Statutes to issue a GAN to accelerate the Project, and the City has requested that the Board issue a GAN for the purposes of paying the construction costs for the Project.

6. To accelerate the construction of the Project in accordance with the Accelerated Project Schedules, the City has agreed to provide the GAN Issuance Costs and a portion of the interest on the GAN, subject to the terms and conditions set forth below.

7. According to the Record of Decision for the Environmental Impact Statement in August, 1999, the Federal Highway Administration has determined that State Route 202 between Country Club Road and U.S. Route 60 is a "Federal-aid highway" within the meaning in Section 350(d) of P.L. 104-59.

8. ~~The City finds and determines that this Agreement will accelerate the completion of the Project~~ which is of vital importance to the general welfare of the City. Further, the completed Project will improve access to the regional freeway system which is anticipated to reduce traffic congestion on arterial streets and assist in improving air quality and thereby improve and enhance the economic welfare of the inhabitants of the City and will assist in the creation and retention of jobs.

III. SCOPE OF WORK

1. The State will:

a. Use its best efforts to provide to State Standards, the design plans, specifications and such other documents and services necessary for bidding of the construction phase of the Project by June, 2001. Enhancements to the design and any additional or extra design features requested by the City will be added (with the State's approval), provided the City pays the additional design, right of way and construction costs. The State will coordinate the design of the street crossings at Val Vista Drive, Greenfield Road and Higley Road with the City.

b. Use its best efforts to acquire all rights of way and easements necessary for construction of the Project by June, 2001. If the State decides to dispose of excess right of way in accordance with State statutes, policies, procedures and guidelines when applicable, the State will communicate with the City regarding the use of and/or disposal of excess right of way with the City in order to provide the City with an opportunity to purchase such excess right of way.

c. Provide a utility easement at no cost to the City in the roadway right of way, where there is adequate space between Gilbert Road and Higley Road, for a City reclaimed water line. An intended purpose of this reclaimed water line is to provide irrigation to the State's roadway landscaping. The State will not purchase additional right of way for such water line easement.

d. Be responsible for the construction of the reclaimed water line system in the State's right of way. The system shall provide the quantity of water and reasonable pressures for the State's landscape irrigation system at no cost to the State pursuant to a future intergovernmental agreement between the State and the City on landscape maintenance. The water shall be of a quality that meets or exceeds State of Arizona standards for Class 3 effluent.

e. Use its best efforts to open bids for the construction of the Project no later than July, 2001 and recommend to the Board that it award one or more construction contracts for the Project. The contracts shall require that the Project be opened to traffic within twenty-two (22) months of contract award, except for unforeseen circumstances that would cause the completion to be delayed due to no

fault of either party. Administer the construction of the Project and make all payments to the contractor(s). Be responsible for any contractor claims for extra compensation attributable to the State.

f. Utilize the Project Programmed Funds for the Project, the payment of costs of the construction of the Project, and the repayment of the GAN.

g. Resume the roadway design, right of way acquisition and construction of the Project as provided under the Life Cycle Program in effect as of the date of termination of this Agreement by the City should the City decide not to proceed under this Agreement as provided in Section V.1.

h. Use its best efforts to obtain timely reimbursements or payment of debt service on the GAN from the Federal Highway Administration for construction expenditures funded by, or debt service on, the GAN.

i. Provide the City with a monthly report reflecting all withdrawals and interest earned on the City Interest Account.

j. Use its best efforts to cause the Board to issue the GAN in an amount equal to the construction costs less available state funding sufficient, along with other available funds, to provide funds to pay the construction and construction related costs of the Project.

k. Be responsible for interest on the GAN in excess of the interest paid by the City pursuant to Section IV (1)(b).

2. The City will:

a. Be responsible for funding enhancements requested by the City and approved by the State, and any related design and right of way costs resulting from the requested enhancements. *as detailed*

b. Be responsible for the design of the reclaimed water line system in the State's right of way. The system shall provide the quantity of water and reasonable pressures for the State's landscape irrigation system at no cost to the State pursuant to a future intergovernmental agreement between the State and the City on landscape maintenance. The water shall be of a quality that meets or exceeds State of Arizona standards for Class 3 effluent.

c. Pay all costs associated with the construction by the State of the reclaimed water line system in the State's right of way.

d. Be responsible for interest costs as described in Section IV(1).

e. On or before the closing of the GAN, establish the City Interest Account with a deposit equal to the City's estimated portion of the interest due on the GAN, as determined by the Department and agreed to by the City, over the anticipated life of the GAN, calculated as described in Section IV(1).b. The City shall make any additional deposits on an as needed basis upon written notification of the need for additional deposits by the Department. Any such additional deposits shall be made within 2 business days of receipt of such notification.

f. Conditioned upon the State's issuance of the GAN and the State's compliance with the terms and conditions of this Agreement, be responsible for its share of the GAN Issuance Costs, as determined by the Department and agreed to by the City, which the City shall pay at the closing of the GAN.

g. Be responsible for non-recoverable expenses of the State due to accelerating the Project only if the City terminates this Agreement without cause prior to issuance of the GAN.

h. Upon completion and acceptance of the Project, assume into the City street system the relocated portion of Thomas Road East of Val Vista Drive and the relocated portion of Thomas Road East of Higley Road, as shown in the Project plans.

IV. PROJECT FINANCING

1. GAN ISSUANCE

a. The State agrees to use its best efforts to cause the Board to issue the GAN in an amount, along with other available funds, sufficient to provide funds for the construction of the Project; provided that the Board will not issue the GAN without the prior execution of the Grant Agreement. The proceeds from the issuance of the GAN will be used to pay Project construction and construction related costs.

b. The City agrees to pay interest to the State as follows:

i. Interest calculated on the outstanding amount of the GAN issued with respect to the Project from the date of issuance of the GAN until the GAN is paid in full with Project Programmed Funds or federal aid reimbursement whichever occurs first. The interest rate on such calculation is equal to the true interest cost on the GAN allocable to the Project ("TIC"), less one-half the construction discount factor set by the State for the Life Cycle Program currently in effect at the time of the issuance of the GAN. Such interest shall be computed on the basis of a year comprised of 360 days consisting of 12 months of 30 days. The State shall withdraw the amount of interest payable from the City Interest Account for a particular period ten (10) calendar days prior to the interest due date to the GAN bond holders.

ii. The amount of interest payable to the State pursuant to Section IV.1.b.i. for any given time period shall be reduced by the product, as determined by the Department and agreed to by the City, of multiplying the interest earnings, if any, in the GAN Proceeds Account related to the Project over the same time period by a fraction, the numerator of which is 120% of the interest rate determined pursuant to Section IV.1.b.i. above and the denominator of which is the TIC on the GAN allocable to the Project.

iii. The GAN allocable to the Project will be determined by the State and agreed to by the City.

c. Solely if this Agreement is terminated by the City without cause and subsequent to issuance of the GAN, the obligation of the City to pay interest as provided in Section IV(b)(i) shall survive the City's termination of this Agreement. If this Agreement is terminated at any time by the State, any obligations of the City to pay interest as provided in Section IV(b)(i) shall be deemed fully satisfied.

2. OWNERSHIP OF INVESTMENT INCOME ON CITY INTEREST ACCOUNT

All interest on, or investment income on, the City Interest Account shall be owned by the City. Any monies remaining in said account after payment of all interest owed on the GAN by the City shall be owned by and returned to the City. The State will be the sole signature on said account held by the State Treasurer.

V. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in force and effect until completion of the design, right of way acquisition and construction of the Project, the repayment by the State of the GAN from the Project Programmed Funds and payment by the City of its share of the interest on the GAN and GAN Issuance Costs. Provided, however, that this Agreement, except the provisions of Section V.2. below, which shall remain in effect until such time as reimbursement by the City has been completed for all monies actually paid by the State pursuant to such section, may be terminated by either party at any time prior to the issuance of the GAN, upon thirty (30) days written notice to the other party.

2. In the event this Agreement is terminated by the City and the State has incurred unrecoverable costs in connection with the bidding process for the construction contracts for the Project, the City shall pay the amount of such unrecoverable costs to the State within ninety (90) days of such termination.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract. The City shall have like rights regarding State and contractor records pertaining to this Agreement and the Project.

6. In the event of any controversy which may arise out of this Agreement, the parties shall agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person, sent by facsimile transmission or deposited in the United States mail, postage prepaid addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
Fax: (602) 712-7424

City of Mesa
City Manager
P.O. Box 1466
Mesa, AZ 85211
Fax: (480) 644-2175

8. Notice shall be deemed received at the time it is actually received. Either party may change its mailing address, fax number or the person to receive notice by notifying the other party as provided in this Section.

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel pursuant to Arizona Revised Statutes Section 11-952.D as Exhibits C and D that the parties are authorized under the laws of the State of Arizona to enter into this Agreement and that the Agreement is in proper form.

10. This Agreement may only be amended with the written consent of the parties hereto.

11. In the event that any clause, provision, subsection, Section or Article of this Agreement shall for any reason be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate such amendments, modification or supplements of or to this Agreement or take such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein and the other provisions of this Agreement shall, as so amended, modified or supplemented, or as otherwise affected by such action, remain in full force and effect.

12. For the purpose of any of the provision of this Agreement, neither the State nor the City, as the case may be, shall be considered in breach of or in default of its obligations under this Agreement as a result of the enforced delay in performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to: acts of God, acts of the public enemy, acts of the Federal Government, fire, floods, epidemics, strikes, lock-outs, freight embargoes and unusually severe weather; it being the purpose and intent of this provision that in the occurrence of any such enforced delay, the time for performance of the State's and the City's obligations, as the case may be, shall be extended for the period of the enforced delay, provided that the Party seeking the benefit of this provisions shall have notified the other Party thereof in writing of the cause or causes thereof, and requested an extension for the period of the enforced delay. If notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after commencement of the cause, the period of delay shall be deemed to commence thirty (30) days prior to the giving of such notice.

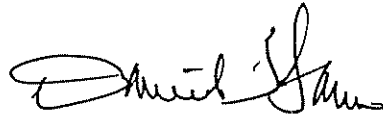
13. The City's obligations hereunder do not and shall not constitute an indebtedness or pledge of the general credit of the City within the meaning of any constitutional, charter or statutory provision relating to the incurring of indebtedness nor a pledge of the full faith and credit of the City. The City's obligations hereunder are enforceable exclusively from taxes, fees, charges, and other monies collected by the State and returned to the City for street and highway purpose pursuant to Title 28, Chapter 8, Article 2 of the Arizona Revised Statutes and are subordinate to any bonds issued under Title 48, Chapter 4, Article 5 of the Arizona Revised Statutes. The State shall not have the right to compel the exercise of any taxing power of the City to pay any amounts owed hereunder. Notwithstanding the foregoing, the City may, but shall not be required, to use any other lawfully available funds to satisfy its obligations.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

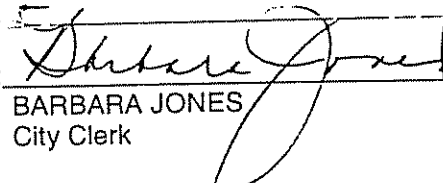
CITY OF MESA

STATE OF ARIZONA
Department of Transportation

By: 
MICHAEL HUTCHINSON
City Manager

By: 
DANIEL S. LANCE, P. E.
Deputy State Engineer

ATTEST:

By: 
BARBARA JONES
City Clerk



05/03/01

EXHIBITS

"A" — Resolution of the Director of the Arizona Department of Transportation authorizing the execution of the agreement.

"B" — Resolution of the Mayor and Council of the City of Mesa, Arizona authorizing the execution of the agreement.

"C" — Attorney General Determination.

"D" — Opinion of Snell & Wilmer, L.L.P.

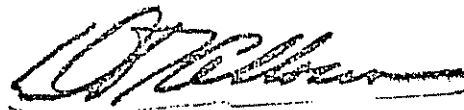
EXHIBIT A

RESOLUTION

JPA 00-179

BE IT RESOLVED on this 19th day of October, 2000, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the City of Mesa for the purpose of defining responsibilities for the acceleration of the design, right of way acquisition and construction of the Red Mountain Freeway (202L), Section Gilbert Road -- Higley Road, in accordance with the Accelerated Project Schedules.

Therefore, authorization is hereby granted to draft said agreement which, upon completion shall be submitted to the Deputy State Engineer for approval and execution.



DAVID ALLOCCO, acting Manager
Engineering Technical Group

for MARY E. PETERS, Director

EXHIBIT B

CITY OF MESA
Great People, Quality Service!
OFFICE OF CITY CLERK

*Certificate
of*
CITY CLERK

I, BARBARA JONES, THE DULY APPOINTED, QUALIFIED AND ACTING CITY CLERK OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, DO HEREBY CERTIFY THAT THE ATTACHED COPY OF RESOLUTION NO. _____ ENTITLED:

RESOLUTION NO. _____

~~RESOLUTION APPROVING THE EXECUTION AND DELIVERY BY THE CITY OF MESA, ARIZONA OF AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA RELATING TO THE ACCELERATION OF THE ROADWAY DESIGN, RIGHT OF WAY ACQUISITION AND ROADWAY CONSTRUCTION OF STATE ROUTE 202L, RED MOUNTAIN FREEWAY BETWEEN GILBERT ROAD AND HIGLEY ROAD, AND THE PAYMENT OF FUNDS BY THE CITY TO THE STATE TO ACCOMPLISH SUCH PURPOSES; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.~~

IS A TRUE, CORRECT AND COMPARED COPY OF THE ORIGINAL OF RECORD, AND ON FILE IN THE OFFICE OF THE CITY CLERK OF THE CITY OF MESA, ARIZONA.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL OF THE CITY OF MESA, MARICOPA COUNTY, STATE OF ARIZONA, THIS ____ DAY _____, 2001.


BARBARA JONES
CITY CLERK



Resolution No. 7635

RESOLUTION APPROVING THE EXECUTION AND DELIVERY BY THE CITY OF MESA, ARIZONA OF AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA RELATING TO THE ACCELERATION OF THE ROADWAY DESIGN, RIGHT OF WAY ACQUISITION AND ROADWAY CONSTRUCTION OF STATE ROUTE 202L, RED MOUNTAIN FREEWAY BETWEEN GILBERT ROAD AND HIGLEY ROAD, AND THE PAYMENT OF FUNDS BY THE CITY TO THE STATE TO ACCOMPLISH SUCH PURPOSES; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

WHEREAS, the City of Mesa, Arizona (the "City") has determined that it will be beneficial to its citizens to cause the completion of State Route 202L, Red Mountain Freeway, between Gilbert Road and Higley Road, including interchanges at Val Vista Drive, Greenfield Road and Higley Road, and the relocation of Thomas Road, east of Higley Road (the "Project") to be accelerated;

WHEREAS, the City, in order to provide for the financing of the acceleration of the Project, it is necessary for the City to enter into an Intergovernmental Agreement (the "IGA") with the State of Arizona (the "State") to provide for assistance in the financing of the Project;

WHEREAS, there has been placed on file with the Clerk of the City and presented to this meeting the proposed form of an IGA.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, THAT:

1. The form, terms and provisions of the IGA in the form of such document presented at this meeting are hereby approved, with such insertions, omissions and changes as shall be approved by the City Manager of the City, the execution of the IGA being conclusive evidence of such approval, and the City Manager and Clerk of the City are hereby authorized and directed, for and on behalf of the City, to sign and attest the IGA.

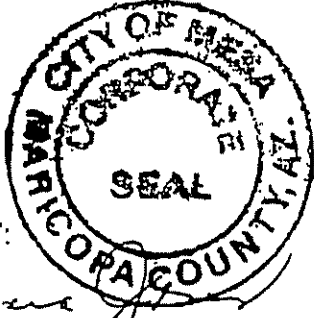
2. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

3. All orders and resolutions or parts thereof, inconsistent herewith, are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order or resolution or any part thereof.

4. The City Manager and all other City officials are hereby authorized and directed to execute any and all further agreements, documents and certificates and to take any and all actions that may be necessary or desirable in consummating the

transactions contemplated in this Resolution and the IGA and pertaining to the financing of the Project. The execution and delivery of such documents shall constitute conclusive evidence of this Council's approval of such documents.

PASSED AND ADOPTED this 19th day of March, 2001.



ATTEST:

Barbara Jones

Barbara Jones, Clerk
City of Mesa, Arizona

APPROVED:

Keno Hawker

Keno Hawker, Mayor,
City of Mesa, Arizona

Snell & Wilmer

LLP
LAW OFFICES

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PHOENIX, ARIZONA

TUCSON, ARIZONA

IRVINE, CALIFORNIA

SALT LAKE CITY, UTAH

DENVER, COLORADO

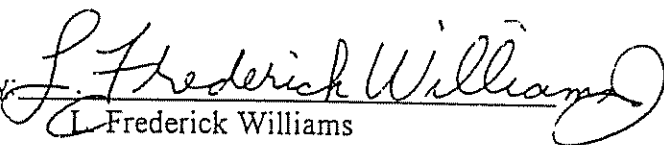
July 5, 2001

MAYOR AND COUNCIL
CITY OF MESA, ARIZONA

Re: City of Mesa
Arizona Department of Transportation
Intergovernmental Agreement ADOT ECS FILE No. JPA 00-179

We have examined Intergovernmental Agreement No. 00-179 (the "Agreement") between the City of Mesa, Arizona (the "City") and the State of Arizona, acting by and through its Department of Transportation (the "State"). Based upon our review of the Agreement pursuant to A.R.S. Section 11-952, we have determined that the Agreement is in proper form and is within the powers and authority granted to the City. No opinion is expressed as to the authority of the State to enter into the Agreement.

SNELL & WILMER^{LLP}

By: 
L. Frederick Williams
Counsel to the City of Mesa



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ. 85007-2926

JANET NAPOLITANO
ATTORNEY GENERAL

TRN Main: (602) 542-1680
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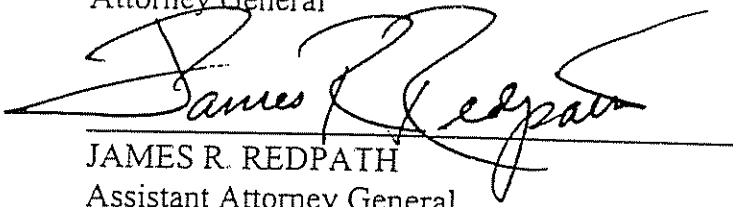
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR00-2104TRN, an agreement ~~between public agencies, has been~~ reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED July 12, 2001.

JANET NAPOLITANO
Attorney General


JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:et/692951

Enc.